

3 FAM 7260 EMPLOYMENT BY PERSONAL SERVICES CONTRACT OF FOREIGN NATIONALS (HOST OR THIRD COUNTRY)

3 FAM 7261 GENERAL POLICY

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

— For State see Federal Acquisition Regulation (FAR) section 37.101.

— USAID see HB 14, USAID Acquisition Regulations (AIDAR), Appendix J.

3 FAM 7261.1 Delegation of Authority

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

See 3 FAH-2H, Chapter 3 for Agency Specific Instructions.

To the extent that authority to enter into personal services contracts has been delegated to Missions by the headquarters of the employing agency, personal services contracts may be executed without prior Washington approval, subject to the availability of funds.

For the Department of State, a specific delegation of authority from the Procurement Executive is required for each personal services contract (PCS) or class of personal services contracts on a case-by-case basis.

For USIA, each post must obtain the approval of the Agency's appropriate Area Office before entering into each such contract or class of contracts on a case-by-case basis. VOA overseas installations must obtain the approval of the appropriate VOA Office Head (VOA/EO, VOA/BR, or VOA/BX) before entering into each such contract or class of contracts on a case-by-case basis.

3 FAM 7261.2 Services Which May Be Performed Under PSC

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

Services which may be performed under PSC include:

- custodial
- housekeeping
- maintenance
- transportation

— and other commercial-type services requiring skilled or unskilled labor; also professional, subprofessional, and clerical services related to mission activities which do not involve the elements indicated in section 3 FAM 7261.3.

3 FAM 7261.3 Services Which May Not Be Performed Under PSC

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

Services which may not be performed under PSC are services which involve discretionary exercise of government authority, policy formulation, program planning, representation, control of money, property, or other valuable resources, or supervision of direct hire employees of the U.S. Government.

3 FAM 7261.4 Conditions of Employment

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

The terms of personal services contracts will conform to the conditions of employment for direct-hire FSN employees (excluding participation in the U.S Civil Service Disability and Retirement System) insofar as possible. Individuals employed under PSC will be enrolled in the host government social security system and/or will be authorized retirement benefits in accordance with those provided for FSN employees who are not participants in CSR. They will qualify for special immigrant visa recommendation provided all criteria for same are met.

3 FAM 7261.5 Compensation and Position Classification

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

Compensation, that is pay and benefits provided to PSC employees, will be determined by guidelines, policies and standards contained in 3 FAH-2H, Chapters 2 and 4, and paid in accordance with the appropriate grade and step of the Local Compensation Plan. In addition to basic compensation, the Local Compensation Plan provides for premium pay, severance pay, bonus payments, workers' compensation, step increases, and other benefits for which direct payment is made.

Each PSC position shall be classified in accordance with 3 FAM 7500 on the basis of the duties assigned as described in Form OF-298, (Interagency Foreign Service National Employee Position Description), which is completed in accordance with 3 FAH-2H, Chapter 4, guidelines and format.

3 FAM 7261.6 Other Terms of Contract

3 FAM 7261.6-1 Death Gratuity

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

Personal services contracts may authorize the death gratuity payment provided for FSN employees by Section 413 of the Foreign Service Act, on the basis of guidance by the employing agency.

3 FAM 7261.6-2 Incentive Awards

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

Personal service contracts may not authorize the employee's participation in the Incentive Awards Program. Posts may establish, with the approval of the respective agency headquarters, a separate incentive awards program for personal services contractors only. The terms of eligibility and selection process for such PSC incentive awards would have to be included by reference and attachment in the personal services contract documents.

3 FAM 7261.6-3 Training

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

Training may be authorized for an individual employed under PSC when it is to the advantage of the U.S. Government. Invitational travel to the United States and to other appropriate training sites, including temporary duty status for consultation and special orientation programs as required, is subject to the approval of the headquarters of the employing agency.

3 FAM 7261.7 Duration of Contract

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

The period of a contract may be up to five years, except in the case of USIA. The contract period for the USIA shall not exceed one year. A personal service contract may be used for securing an individual's services for certain work of a continuing nature (see Section 7261.2, as well as for temporary or intermittent services). Review by the post to confirm a continuing need for the employee's service will be made annually. No limit is established for the number of times a specific contract may be renewed when an annual determination of continuing need is made.

3 FAM 7261.8 Transfers To and From PSC Status and FSN Appointment

3 FAM 7261.8-1 Severance Pay

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

In lieu of severance payments, severance liability will be transferred when;

— An FSN employee is separated in order to be employed under a PSC, with a break in service of three working days or less, or

— When a PSC employee is appointed as FSN, with a break in service of three working days or less.

If local law requires:

— That all periods of continuous service with the same employer be compensated in one payment at time of separation: and,

— If the receiving state considers the commissary or recreation association, or organization which supplies services solely to the Embassy to be an integral part of the Mission (as will usually be the case); then liability for severance pay will be transferred from these entities when such service immediately precedes employment with the Embassy in a PSC or direct-hire status.

Where a foreign national has served under purchase order immediately preceding employment in the Embassy in a PSC or direct-hire status and local law makes no distinction between contractual and direct-hire employment, severance liability is assumed. Where possible, appropriate transfer of funds, including all accrued interest, to support such payments will be made at the time of transfer by the commissary or recreation association, or organization, to the Mission.

When such transfer involves a different agency, the gaining agency accepts the responsibility for total severance payment at the time of eventual separation from the USG, except transfers involving military service components where interagency funding is to be resolved on a case-by-case basis.

Service may not be broken solely to provide severance payment or any other monetary benefit.

3 FAM 7261.8-2 Annual/Sick Leave

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

If the individual is under a U.S. style leave plan, sick/annual leave credits will be transferred when the individual is separated in order to be employed under a PSC without a break in service of more than three days, or when a PSC employee is appointed as FSN without a break in service of more than three days. When the break exceeds three calendar days, lump sum payment for unused annual leave is made in accordance with post practice; pro-rata repayment is required if reemployment (either direct-hire or PSC) occurs before end of period covered by annual leave payment. Reemployment within three years entitles employee to reinstatement of sick leave balance.

If the individual is under a local leave plan, crediting will be in accordance with local practice, as reflected in the post's local leave plan approved in Washington.

Leave accrual rates for PSC employees shall be based upon total documented service to the U.S. Government as specified in the leave plan under which the employee is covered.

3 FAM 7261.8-3 Other Payments

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

If credit for bonus or other benefits accumulate rather than being discharged through inclusion in biweekly salary payments, such credits will be handled in accordance with the principles of 3 FAM 7261.8-1 above.

3 FAM 7262 REEMPLOYED ANNUITANTS

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

Compensation for a personal services contractor who is also receiving an annuity under the Civil Service Disability and Retirement System need not be reduced (as is required for annuitants in a direct-hire status) since contract service is not recognized as creditable for CSR purposes.

3 FAM 7263 NON-PERSONAL SERVICE CONTRACTS

(TL:PER-237; 1-1-95)

(Uniform State/USAID/USIA/Commerce/Peace Corps/DOD/Agriculture)

(Applies to Foreign Service Nationals Only)

The regulations governing contracting for nonpersonal services are in 6 FAM. Compensation for services performed under a non-PSC is in accordance with locally prevailing practice and/or law.

Retired former employees receiving annuities under the Civil Service Disability and Retirement System are not required to have the amount of their annuities deducted from compensation received under nonpersonal services contracts.

Administrative support for nonpersonal services contracts is provided by the General Services Office or, if none, the Administrative Office of the Embassy.

3 FAM 7264 THROUGH 7269 UNASSIGNED